

# **SUBMISSION TO THE PANEL OF EXPERTS APPOINTED BY H.E. THE PRESIDENT ON THE NATIONAL QUESTION**

## *Summary*

We the undersigned believe that constitutional reform which aims to provide a solution to the 'national question' should move away from the concept of a unitary state and towards a federal Constitution. This Constitution should embrace principles of equality, diversity and protection of human rights and should provide adequate protection to vulnerable/affected groups such as minorities. This submission focuses mainly on fundamental rights, the rights of women and socio-economic rights. Where the rights of women are concerned, the submission deals with a variety of issues ranging from violence against women to the establishment of a Gender Equality Commission.

### **Supremacy of the Constitution**

The supremacy of the Constitution should be recognised and all existing and future laws should be brought in line with the Constitution. When ensuring that existing laws are in line with the Constitution, a special provision should be included in relation to personal laws which, allows individuals to choose whether they wish to be governed by general law or personal law. This will ensure that both, the rights of the communities to practice their laws, and of the particular affected groups within these communities, such as women, not to be discriminated against are also protected.

The Constitution should be drafted keeping in mind the three principles of Constitutionalism with regard to the purpose of Constitutions, - a Constitution is supposed to lay out a framework for society, it is meant to protect individual autonomy and freedom, and lay down norms and principles by which society is to be governed.

### **Bill of Rights/Fundamental Rights**

The Preamble to the Constitution should include the concept of human dignity and human rights as core elements of the Constitution.

The fundamental rights chapter must include a separate section on the right to dignity in addition to the clause on the right to life.

The language of the fundamental rights chapter of the Constitution should be brought in line with the International Covenant on Civil and Political and the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. Restrictions to these rights should be limited to and correspond with the actual wording contained in the 3 Covenants. Sri Lanka is signatory to all three Conventions.

The Constitution should contain a specific provision that commits Sri Lanka to the norms and standards set out in international human rights treaties and covenants that the government has ratified.

There should be a provision in the Constitution that ensures that future devolved regional structures/councils/administrative units are bound by the fundamental rights chapter of the Constitution.

### Civil and Political Rights

Civil and political rights should be strengthened in any proposed Constitution and certain rights, such as the right to life and right not to be subjected to torture, should be non-derogable. The Constitution should also contain strong protective measures along the lines of the clauses in the South African Constitution in the event of derogation in times of emergency.

### Socio-Economic Rights

Socio-economic rights should be included in the Bill of Rights/Fundamental Rights Chapter. The right to health-care, food, housing, education should be protected along with the right of children and young persons to be protected from economic and social exploitation.

### Rights of Women

The fundamental rights chapter should incorporate a specific provision on violence against women, and national and regional executives should be bound to take 'due diligence' measures to prevent violence against women and prosecute those who commit violence against women.

There should be a specific provision on the right to reproductive health along the lines of the programme of action of the International Conference on Population and Development..

Given the significant role played by the private sector, the accountability for fundamental rights violations should be extended to private actors, along the lines of the Convention on the Elimination of All Forms of Discrimination Against Women.

### Gender Equality Commission

The Constitution should make provision for the establishment of a Commission for Gender Equality. The responsibilities of the Commission should include monitoring and investigating complaints of gender discrimination, and educating, advising and reporting on relevant gender issues. The Commission should have regional offices to enable greater public

access. The Commission should also make recommendations with regard to law reform and statutory policy.

### Political Reservations for Women

Though in principle the Proportional Representation (PR) is more favourable to women, the PR system as adopted in Sri Lanka has had an adverse effect on the participation of women in the political processes of the country. This is due to the large size of the constituencies and the introduction of the preferential system with the Proportional Representation system. Furthermore, since the Parliamentary Select Committee in its **Interim Report of 2004** proposed a **mixed system** we propose the following:

- The Constitution should require political parties to nominate minimum 25% women as candidates in all constituencies in every election.
- All political parties should be required to appoint 30% women to the National List.
- Reservation of 30% of selected seats for women within the framework of a Proportional Representation system or a Combination system.

### **Signatories**

- INTERNATIONAL CENTRE FOR ETHNIC STUDIES, COLOMBO
- WOMEN & MEDIA COLLECTIVE
- INFORM
- AGROMART OUTREACH FOUNDATION
- PENN WIMOCHANA GNANODAYAM, HATTON
- DABIDU COLLECTIVE
- WOMEN'S EDUCATION AND RESEARCH CENTRE
- SOCIAL SCIENTISTS ASSOCIATION - GENDER UNIT
- WOMEN'S DEVELOPMENT CENTRE - KANDY
- SURIYA WOMEN'S DEVELOPMENT CENTRE - BATTICALOA
- WOMEN IN NEED